

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE, TRADE AND CONSUMER PROTECTION
ADOPTING AND AMENDING RULES**

- 1 The state of Wisconsin department of agriculture, trade and consumer protection
2 proposes the following order to amend chapter ATPC 127(note) and s. ATPC 127.01(15);
3 and to create subchapter V of chapter ATPC 127; relating to telephone solicitations and a
4 no-call list.

**Analysis Prepared by the Department of
Agriculture, Trade and Consumer Protection**

Statutory authority: ss. 100.20(2) and 100.52

Statutes interpreted: ss. 100.20 and 100.52

Background

The Wisconsin department of agriculture, trade and consumer protection (DATCP) regulates unfair and deceptive business practices under s. 100.20, Stats. DATCP has adopted rules, under ch. ATPC 127, Wis. Adm. Code, to protect consumers against unfair telemarketing practices. The Legislature has also directed DATCP, under s. 100.52, Stats., to create a “no-call” list of consumers who do not wish to receive telemarketing calls.

Under s. 100.52, Stats., consumers may contact DATCP to sign up for the “no call” list. Telemarketers may not call consumers whose telephone numbers appear on the list. Telemarketers must register with DATCP and pay fees to finance the list compilation and distribution. On a regular periodic basis, DATCP must update the list and distribute it to registered telemarketers. DATCP must adopt rules to implement this program.

This rule creates a telemarketing “no-call” program, as directed by the Legislature. DATCP is adding this rule to DATCP’s current telemarketing rules under ch. ATPC 127, Wis. Adm. Code.

“Telephone Solicitations” Covered

This rule regulates “telephone solicitations” to persons located in this state, regardless of where the calls originate. A “telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services. “Telephone solicitation” does not include any of the following:

- A telephone call encouraging the call recipient to buy property, goods or services from a “nonprofit organization” unless sale proceeds are subject to Wisconsin sales tax or federal income tax.
- A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does *not* apply to a caller who does any of the following:
 - Sells or promotes the sale of property, goods or services for others.
 - Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller’s sales methods.
- A telephone call made in response to the call recipient’s request for that call.
- A telephone call made to a current client. A current client is a person who has a current agreement to receive, from the caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call.
- A telephone call made to a number listed in the current local business telephone directory.
- One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.
- A telephone call made to determine a former client’s level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase more property, goods or services.

Telemarketers Must Register

This rule requires telemarketers to register annually with DATCP. A registration expires on November 30 of each year. Under this rule:

- A firm must register annually with DATCP if the firm employs or contracts with individuals to make telephone solicitations to residential customers. A firm that sells property, goods or services may register on behalf of another firm that hires individual telemarketers to promote sales by the registrant.

For example, an insurance company may register on behalf of a local insurance agency whose employees telemarket that company's insurance. But that registration does not cover the local agency's employees when they telemarket another company's insurance.

- No individual may make a telephone solicitation to a residential telephone customer unless the telephone solicitation is covered by a registration under this rule.

Telemarketer Registration Form

To register with DATCP, a firm must complete an annual registration form and pay annual fees. The registration form must include all the following:

- The registrant's correct legal name, and all trade names under which the registrant does business.
- The registrant's principal business address and telephone number. The business address shall include street address, zip code, state or province, and nation.
- The registrant's federal tax identification (FEIN) number.
- The name and address of the registrant's registered agent in this state, if any.
- The name and address of a person who will accept service of process on behalf of the registrant, if other than a registered agent in this state.
- The name, address and telephone number of a person who may respond, on behalf of the registrant, to DATCP notices and inquiries.
- The number of telephone lines that will be used to make telephone solicitations under the registration. The registrant must provide the telephone numbers associated with each of these lines.
- The number of individuals who will make telephone solicitations under the registration. The registrant must provide the names of the individuals if DATCP requests those names.
- A statement indicating the form in which the registrant wishes to receive "no-call" lists. A registrant may receive "no-call" lists in one or more of the following forms:
 - By e-mail transmission to an e-mail address provided by the registrant.
 - As a compact disc, mailed to an address provided by the registrant.
 - In hard-copy printed form, mailed to an address provided by the registrant.

Telemarketer Registration Fees

A firm registering with DATCP must pay the following annual fees, or an annual fee of \$20,000, whichever is less:

- A basic annual registration fee of \$700 for the first year of registration, and \$500 for each year thereafter.
- A supplementary annual fee of \$75 for each telephone line used to make telephone solicitations under the registration. This fee does not apply if fewer than 4 telephone lines will be used.
- A supplementary annual fee of \$25 for each e-mail address to which the registrant would like DATCP to send the “no-call” list. This fee does not apply if the registrant asks DATCP to send the “no-call” list to just one e-mail address.
- A supplementary annual fee of \$25 for each address to which the registrant would like DATCP to send the “no-call” list in compact disc form.
- A supplementary annual fee of \$1,000 for each address to which the registrant would like DATCP to send the “no-call” list in hard-copy print form.

DATCP may reduce the fees charged to registrants in any registration year (beginning December 1) if DATCP projects that the balance in its fee revenue appropriation at DATCP’s next fiscal-year-end (June 30) will exceed DATCP’s total projected expenditures for the “no call” program in that fiscal year by more than 15%.

Updating Registration Information

This rule requires registrants to notify DATCP of material changes in registration information that occur during the registration year, and pay any additional fees owed for the registration year as a result of the change.

The “No-Call” List

DATCP must compile a “no-call” list containing the telephone numbers and ZIP codes of residential telephone customers who sign up for the list. No person may make a telephone solicitation, either directly or through an employee or agent, to a residential customer whose telephone number appears on the current no-call list.

A residential telephone customer may contact DATCP by phone, or at DATCP’s website, to sign up for the “no-call” list. A customer’s caregiver may sign up on behalf of the customer. The customer or caregiver shall give DATCP all the following information:

- The customer’s telephone number including area code.

- The customer's ZIP code.
- The customer's name and address, if requested by DATCP. *DATCP will not include this information on the "no-call" list, but may request it for verification purposes.*
- The caregiver's name and address, if a caregiver contacts DATCP on behalf of the customer. *DATCP will not include this information on the "no-call" list, but requires it for verification purposes.*

Distributing the List

DATCP must distribute the "no-call" list to each firm that is currently registered with DATCP. DATCP must distribute the list in the manner specified by the registrant (assuming that the registrant pays the required fees for that method of delivery). A "no-call" list takes effect on a date specified by DATCP, not sooner than 10 business days after DATCP distributes the list.

Updating the List

DATCP must compile and distribute an updated "no-call" list every 3 months. DATCP must distribute updated lists in the same manner as the initial list. DATCP must delete a residential telephone customer from the "no-call" list 2 years after that customer last signed up for inclusion on the list. A customer may renew a sign-up at any time.

No Unauthorized Release

A registrant may not redistribute any part of a "no-call" list to any other person, except that the registrant may redistribute the list to a person covered by the registration. DATCP may not release a "no-call" list, or any information used to compile the list, except that:

- DATCP may release a "no-call" list to firms currently registered with DATCP.
- DATCP may release a "no-call" list as necessary to enforce this rule, or to comply with a subpoena or judicial process, subject to such protective orders as may be necessary to ensure the confidentiality of the list.
- DATCP may release the "no-call" list to the federal trade commission or other federal agency maintaining a national "no-call" list.

Telephone solicitation practices

Telemarketers must comply with current DATCP telemarketing rules under ch. ATCP 127, Wis. Adm. Code. In addition, this rule prohibits telemarketers from doing any of the following:

- Making telephone solicitations to a residential telephone customer, unless the telemarketer is registered with DATCP or covered by a current registration.
- Making a telephone solicitation to a residential telephone customer whose telephone number appears on the current “no call” list.
- Using an electronically prerecorded message in a telephone solicitation to a residential or nonresidential telephone customer without the prior consent of that telephone customer.
- Failing to disclose, at the request of a residential telephone customer receiving a telephone solicitation, the telemarketer’s Wisconsin registration number.
- Making a telephone solicitation to a nonresidential telephone customer (business) if that business has notified the telemarketer by mail that the business does not wish to receive telephone solicitations. A telemarketer must provide a business with the telemarketer’s mailing address within 10 days after the business requests it.
- Requiring, instructing or authorizing an employee or agent to make a telephone solicitation in violation of this rule, or facilitating a violation of this rule.
- Using caller-ID blocking when making a telephone solicitation.

Telemarketer Records

Under current DATCP telemarketing rules, telemarketers must keep certain records for at least 2 years and must make those records available to DATCP upon request. Among other things, a telemarketer must keep records related to individuals who make telephone solicitations as employees or agents of the telemarketer, including names, addresses, telephone numbers, job titles, and fictitious names if any (no 2 individuals may use the same fictitious name). This rule requires telemarketers to comply with current record keeping requirements.

1 **SECTION 1.** Chapter ATCP 127 (note) is amended to read:

2 **NOTE:** This chapter is adopted under authority of s. 100.20(2), Stats., and is
3 administered by the Wisconsin department of agriculture, trade and
4 consumer protection. Violations of this chapter may be prosecuted under
5 s. 100.20(6) and s. 100.26(3) and (6), Stats. A person who suffers a
6 monetary loss because of a violation of this chapter may sue the violator
7 directly under s. 100.20(5), Stats., and may recover twice the amount of
8 the loss, together with costs and reasonable attorneys’ fees. Subchapter V
9 is also adopted under authority of s. 100.52, Stats.

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11 **SECTION 2.** Section ATCP 127.01(15) is amended to read:

ATCP 127.01(15) “Person” means an individual, corporation, partnership, cooperative association, limited liability company, trust, or other organization or legal entity.

SECTION 3. Subchapter V of chapter ATPC 127 is created to read:

SUBCHAPTER V

TELEPHONE SOLICITATIONS; NO-CALL LIST

ATCP 127.80 Definitions. In this subchapter:

(1) “Basic local exchange service” has the meaning given in s. 196.01(1g), Stats.

(2) “Client” means a person who has a current agreement to receive, from the telephone caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call.

(3) “Nonresidential telephone customer” means a person, other than a residential customer, who receives telecommunications service from a telecommunications utility.

(4) “No-call list” means a list compiled and distributed according to s. ATCP 127.82.

(5) “Residential telephone customer” means an individual in this state who receives basic local exchange service from a telecommunications utility.

(6) “Telephone call” means a voice communication over any part of the electromagnetic spectrum to customer premises equipment.

NOTE: If a telecommunications provider initiates a voice communication with a customer during a telephone conversation between the customer and a third party, the telecommunications provider has initiated a “telephone call” as that term is used in this subchapter.

(7) “Telephone line” means a circuit or channel, including a voice grade equivalent channel, that is derived from a line, cable or digital facility, and that may be used to make a telephone call.

(8) “Telecommunications service” has the meaning given in s. 196.01(9m), Stats.

(9) “Telecommunications utility” has the meaning given in s. 196.01(10), Stats., and includes an “alternative telecommunication utility” as defined in s. 196.01(1d), Stats.

(10) “Telephone solicitation” means an unsolicited telephone call for the purpose of encouraging the call recipient to buy property, goods or services, or that is part of a plan or scheme to encourage the call recipient to buy property, goods or services.

“Telephone solicitation” does not include any of the following:

(a) A telephone call encouraging the call recipient to buy property, goods or services from a nonprofit organization if all the following apply:

1. The nonprofit organization complies with subch. III of ch. 440, Stats., if applicable.
2. Sale proceeds, if any, are exempt from Wisconsin sales tax and federal income tax.

NOTE: The definition of “telephone solicitation” applies to phone calls promoting *sales*, not charity donations. But it may cover charity solicitations that are really part of a plan or scheme to *sell* property, goods or services. Subchapter III of ch. 440, Stats., regulates charitable solicitations.

Telephone calls promoting sales by nonprofit organizations are exempt *if* the sale proceeds are exempt from Wisconsin sales tax and federal income tax. Section 77.54(7m), Stats., defines the scope of the Wisconsin sales tax exemption for sales by nonprofit organizations. Federal income tax laws require an otherwise exempt nonprofit organization to pay income tax on “unrelated business taxable income” as defined in 26 CFR 1.512(a)-1.

(b) A telephone call made by an individual acting on his or her own behalf, and not as an employee or agent for any other person. This exemption does not apply to a caller who does any of the following:

1. Sells or promotes the sale of property, goods or services for another person.

NOTE: For example, self-employed insurance agents are not exempt from this subchapter when they or their employees make telephone calls to promote the sale of insurance policies offered by insurance companies. But an insurance company may register under s. ATCP 127.81(1)(b) on behalf of self-employed insurance agents and their employees who telemarket the company's insurance.

2. Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.

(c) A telephone call made in response to the call recipient's affirmative request for that call.

NOTE: A failure to respond to a negative option ("we will call unless you say no") is not an "affirmative request" under par. (c).

(d) A telephone call made to a current client.

NOTE: See definition of "client" under sub. (2).

(e) A telephone call made to a number listed in the current local business telephone directory.

(f) One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.

(g) A telephone call made to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase property, goods or services.

1 **ATCP 127.81 Telephone solicitors; registration. (1) REGISTRATION**
2 REQUIRED. (a) No person may employ or contract with any individual to make telephone
3 solicitations to residential telephone customers unless one of the following applies:
4 1. That person is currently registered with the department under this section.
5 This registration covers telephone solicitations made by individuals acting as employees
6 or agents of the registrant.
7 2. The telephone solicitations are covered by a registration under par. (b).
8 (b) A person who sells property, goods or services may register under this section
9 on behalf of a person who employs or contracts with individuals to make telephone
10 solicitations promoting the purchase of property, goods or services from the registrant.
11 This registration covers telephone solicitations that those individuals make for that
12 purpose. It does not cover telephone solicitations promoting the purchase of property,
13 goods or services from persons other than the registrant.
14 **NOTE:** For example, an insurance company may register under par. (b) on behalf
15 of a self-employed insurance agent whose employees telemarket that
16 company's insurance. But that registration does not cover the agent's
17 employees when they telemarket another company's insurance.
18
19 (c) No individual may make a telephone solicitation to a residential telephone
20 customer unless the telephone solicitation is covered by a registration under this section.
21 **(2) ANNUAL REGISTRATION.** To register under this section, a person shall
22 complete an annual registration form provided by the department. The registrant shall
23 file, with the registration form, the annual fees required under sub. (3). The registration
24 form shall include all the following:
25 (a) The registrant's correct legal name, and all trade names under which the
26 registrant does business.

- 1 (b) The registrant's principal business address and telephone number. The
2 business address shall include street address, zip code, state or province, and nation.
- 3 (c) The registrant's federal tax identification (FEIN) number.
- 4 (d) The name and address of the registrant's registered agent in this state, if any.
- 5 (e) The name and address of a person who will accept service of process on
6 behalf of the registrant, if other than a registered agent under par. (d).
- 7 (f) The name, address and telephone number of a person who may respond, on
8 behalf of the registrant, to department notices and inquiries.
- 9 (g) The number of telephone lines that will be used to make telephone
10 solicitations under the registration.
- 11 (h) The telephone number assigned to each telephone line counted under par. (g).
- 12 (i) The number of individuals who will make telephone solicitations under the
13 registration. The registrant shall provide the names of the individuals if the department
14 requests those names. A person who registers under sub. (1)(b) on behalf of another
15 person shall identify that other person.
- 16 (j) A statement indicating the form in which the registrant wishes to receive no-
17 call lists. A registrant may receive no-call lists in one or more of the following forms:
- 18 1. By e-mail transmission to one or more e-mail addresses provided by the
19 registrant. Each e-mail address shall be that of the registrant, or a person covered by the
20 registration.
- 21 2. As a compact disc, mailed to one or more addresses provided by the registrant.
22 Each address shall be that of the registrant, or a person covered by the registration. The
23 registrant shall specify the number of compact discs to be included in each mailing.

1 3. In hard-copy printed form, mailed to one or more addresses provided by the
2 registrant. Each address shall be that of the registrant, or a person covered by the
3 registration. The registrant shall specify the number of hard-copy lists to be included in
4 each mailing.

5 **(3) FEES.** A person registering under sub. (2) shall pay the following annual
6 fees, or an annual fee of \$20,000, whichever is less:

7 (a) A basic annual registration fee of \$700 for the first year of registration, and
8 \$500 for each subsequent year.

9 (b) A supplementary annual fee of \$75 for each telephone line identified under
10 sub. (2)(g). This fee does not apply if the registrant identifies fewer than 4 telephone
11 lines under sub. (2)(g).

12 (c) A supplementary annual fee of \$25 for each e-mail address identified under
13 sub. (2)(j)1. This fee does not apply if the registrant identifies only one e-mail address
14 under sub. (2)(j)1.

15 (d) A supplementary annual fee of \$25 for each address identified under sub.
16 (2)(j)2. If the registrant asks the department to send more than one annual set of compact
17 discs to any address, the registrant shall pay an additional fee of \$25 for each additional
18 set of discs sent to that address.

19 (e) A supplementary annual fee of \$1,000 for each address identified under sub.
20 (2)(j)3. If the registrant asks the department to send more than one annual set of hard-
21 copy lists to any address, the registrant shall pay an additional fee of \$1,000 for each
22 additional set of hard-copy lists sent to that address.

23 **NOTE:** An “annual set” under pars. (d) and (e) consists of the 4 quarterly list
24 updates under s. 127.82(5).

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(4) REGISTRATION EXPIRES. A registration under this section expires on November 30 of each year.

(5) FEE REDUCTIONS. The department may reduce the annual fees charged to registrants under sub. (3) if the department’s projected fiscal-year-end cash balance in the appropriation under s. 20.115(8)(jm), Stats., exceeds the department’s projected fiscal year expenditures from that appropriation during that fiscal year by at least 15%. Fee reductions, if any, are subject to the following conditions:

(a) A fee reduction shall be a percentage reduction in the total fee that a registrant would otherwise pay under sub. (3). All registrants shall receive the same percentage fee reduction.

(b) The department may offer one fee reduction per registration year. The fee reduction, if any, applies to the entire registration year beginning December 1. By November 1 of each calendar year, the department shall notify all current registrants of any fee reduction that will take effect for the registration year beginning December 1 of that calendar year.

(6) UPDATED INFORMATION. A registrant shall do all the following whenever there is a material change in the information provided under sub. (2) during a registration year:

(a) Notify the department of the change.

(b) Pay any additional fees owed for that registration year as a result of the change.

ATCP 127.82 No-call list. (1) COMPILING THE LIST. The department shall compile a no-call list containing the telephone numbers and ZIP codes of residential

1 telephone customers who indicate, according to sub. (3), that they do not wish to receive
2 telephone solicitations.

3 (2) SOLICITATIONS PROHIBITED. No person may make a telephone solicitation,
4 either directly or through an employee or agent, to a residential customer whose
5 telephone number appears on the current no-call list.

6 (3) INDIVIDUALS INCLUDED ON THE LIST. (a) A residential telephone customer or
7 the customer's caregiver may contact the department to have the customer included on
8 the no-call list. The residential telephone customer or caregiver shall give the department
9 all the following information:

10 1. The customer's telephone number including area code.

11 2. The customer's postal ZIP code.

12 3. The customer's name and address, if requested by the department. The
13 department may not include the customer's name or address on the no-call list.

14 4. The caregiver's name and address, if a caregiver contacts the department on
15 behalf of the customer. The department may not include the caregiver's name or address
16 on the no-call list.

17 **NOTE:** The department will publish a telephone number and website address that
18 residential telephone customers may contact to sign up for the no-call list.
19 The no-call list will include only the customer's telephone number and
20 ZIP code.

21
22 (b) No person, other than a residential telephone customer or the customer's
23 caregiver, may ask the department to include the customer on the no-call list.

24 (4) DISTRIBUTING THE LIST. The department shall distribute the no-call list to
25 each person who is currently registered with the department under s. ATCP 127.81. The
26 department shall distribute the no-call list to the addresses, and in the manner, specified

1 by the registrant under s. ATCP 127.81(2)(j). A no-call list takes effect on the date
2 specified by the department. The effective date shall be not sooner than 10 business days
3 after the department distributes the list.

4 **(5) UPDATING THE LIST.** The department shall compile and distribute an updated
5 no-call list every 3 months. The department shall distribute each updated list in the
6 manner provided under sub. (4). An updated list takes effect on the date specified by the
7 department. The effective date shall be not sooner than 10 business days after the
8 department distributes the list.

9 **(6) LIST DELETIONS AND RENEWALS.** The department shall delete a residential
10 telephone customer from the no-call list 2 years after that customer last applied for
11 listing. The customer or the customer's caregiver may renew the customer's listing at
12 any time, in the manner provided for an original listing under sub. (3).

13 **(7) NO RE-DISTRIBUTION BY LIST RECIPIENTS.** A person who receives a no-call list
14 may not distribute any part of that list to another person, except that a current registrant
15 under s. ATCP 127.81 may redistribute the list to persons covered by that registration.

16 **(8) LIST NOT OPEN TO PUBLIC INSPECTION.** (a) The department may not release a
17 no-call list, or any information collected under sub. (3), except that:

18 1. The department may release a no-call list to a person currently registered under
19 s. 127.81, or to persons covered by that registration, as provided in this section.

20 2. The department may release a no-call list as necessary to enforce this
21 subchapter, or to comply with a subpoena or judicial process, subject to any protective
22 orders that may be necessary to ensure the confidentiality of the list.

1 3. The department may release a no-call list to the federal trade commission or
2 other federal agency maintaining a national no-call list.

3 **NOTE:** See s. 100.52(2)(c), Stats.

4 **127.83 Telephone solicitation practices. (1)** Persons making telephone
5 solicitations shall comply with applicable requirements in subchapter II.

6 **(2)** No person may do any of the following:

7 (a) Make a telephone solicitation in violation of s. ATCP 127.81 or 127.82.

8 (b) Use an electronically prerecorded message in a telephone solicitation to a
9 residential or nonresidential telephone customer without the prior consent of that
10 telephone customer.

11 **NOTE:** See also ss. 100.52(1) and 134.72, Stats. Paragraph (b) does not limit the
12 application of those statutes.

13 (c) Make a telephone solicitation to a nonresidential telephone customer if the
14 nonresidential telephone customer has notified the person by mail that the nonresidential
15 telephone customer does not wish to receive telephone solicitations.

16 (d) Require, instruct or authorize any person to violate this subchapter, or
17 facilitate any person's violation of this subchapter.

18 (e) Use caller-ID blocking when making a telephone solicitation.

19 (f) Falsify any information required under this subchapter.

20 **(3)** A person making a telephone solicitation to a residential telephone customer
21 shall give the call recipient, at the call recipient's request, the number of the registration
22 under s. ATCP 127.81 that covers the telephone solicitation.

23 **(4)** A person making a telephone solicitation to a nonresidential telephone
24 customer shall give the call recipient, at the call recipient's request, a mailing address to
25

1 which the nonresidential telephone customer may mail a notice under sub. (2)(c). The
2 person shall provide the mailing address within 10 days after the call recipient requests it.

3 **127.84 Record keeping.** Persons who employ or contract individuals to make
4 telephone solicitations shall comply with record keeping and record production
5 requirements applicable to sellers under s. ATCP 127.18.

6 **EFFECTIVE DATE.** This rule shall take effect on the first day of the month
7 following publication in the Wisconsin administrative register, as provided in s.
8 227.22(2)(intro.), Stats.

9

Dated this _____ day of _____, _____.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By _____
James E. Harsdorf, Secretary